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Butte, George Charles

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"In the spririt of 1836"

Austin

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ACADEMIC FREEDOM

OR

"In the Spirit of 1836"

The "Independence Day" Address delivered Before
the Student Body of the University of Texas
on March 2, 1917.



By

GEORGE CHARLES BUTTE, M. A., J. U. D.,

Associate Professor of Law in the University of Texas

Austin, 1917

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FELLOW STUDENTS, LADIES AND GENTLEMEN:

Men and nations have made the greatest single strides in their progress toward enlightenment and liberty, both civil and religious, by timely rebellion against the so-called "duly constituted authorities." Tyranny has always worn the mask of law. "If you will study history, you will find that freedom, when it has been destroyed, has always been destroyed by those who shelter themselves under the cover of its forms and who speak its language with unparalleled eloquence and vigor."

If you will permit me to draw a parallel between the crisis that now confronts our Academic Republic and the crisis that confronted the infant Republic of Texas this day, eighty-one years ago, when the usurper and dictator Santa Anna invaded its domain to enforce the government of the bayonet, may we not take courage from the example of the fathers of Texas, and may we not on this glorious anniversary receive a Pentecostal outpouring of the heroic spirit of 1836?

This is no day for platitudes. This is no day for empty glorification. This is a day for testing. This is a day for introspection. This is a day for firm and high resolves. The men and women of '36 have left us a heritage more precious than rubies and that cannot be gotten for gold—the priceless heritage of a lofty ideal!—an ideal for which they sacrificed the comforts of ease and the solace of home, for which they battled at greatest hazards against the cruellest of despots—an ideal which they upheld in unity and in courage because they were conscious of their debt to us, their posterity! Are we true to that ideal? Is the spirit of '36 dead? Or is it only sleeping? Or is it perchance fully alive in our hearts directing our energies and shaping our thoughts along the same noble and heroic lines pursued by the men who voted the Declaration of Independence at Washington and to maintain it fought cannon with bowie knives on the gory field of San Jacinto?

Let us try ourselves!

On October 11, 1916, the Regents of the University of Texas, by a vote of 7 to 1 adopted the following motion: "I move, as to Prof. Cofer, that the charges be dismissed, but that this Board notify Mr. Cofer in particular and all members of the faculty be cautioned in the future that political activity will be wholly discouraged under all circumstances."

I am not going to make any incendiary speech about this resolution because I wish to appeal not only to your courage but also to your reason. It has been generally supposed—on what authority I know not—that this resolution is not to be taken literally,—that it doesn't mean what it says; and further, that it was passed under press of both time and circumstance and was not, in fact, carefully considered. But, Ladies and Gentlemen, I have too high a regard for the intelligence and sincerity of the Regents who voted for that resolution to assert that they did not intend at the time of voting just what they said. It is still upon the records of the Board; and the educational world in this state and nation, without information of any mental reservations of the Regents, can draw but one conclusion from the emphatic language employed.

My able colleague and friend, Prof. Cofer, who is specifically mentioned in this resolution, explained his conduct to the satisfaction of the Board and so far as his personal fortunes are concerned, the case is a closed book. I think, however, with all due respect to him, for I am fond of him and count him my friend, our colleague was not fully conscious, in the crisis that was so unjustly forced upon him, of his representative character. In so far as he represented me—I speak only for myself—his attitude, in the face of the charges made against him, was too apologetic, as if he had done something wrong, which was emphatically not the case. He said in the course of his defense, as officially published: "If I ever engaged in political activity then the scope of your investigation will include one half of the members of the faculty whose activities have been so much more pronounced than mine." Gentlemen, I am glad he said that. It made it clearer to the Regents that when they were trying our colleague, they were trying every member of the University faculty. That they realized this is demonstrated by the final action taken which did not content itself with disposing of the defendant on trial but included, in the same rebukeful warning addressed to him in particular, all the other members of this faculty who had not been granted a hearing.

I have gone carefully into the available history of the leading universities of this and other countries and can assure you this resolution of our Board of Regents is without precedent in the annals of first class universities—except in Russia. I ask you to examine with me calmly and fearlessly and without any

sort of rancor, what is the true significance of this resolution and what, if consistently enforced, its effects upon our academic life will be. A happy issue of the present crisis is as vitally important to you students as to us faculty men. Carlyle has epigrammatically defined a university to be a collection of books. I should prefer to say: A university is a society of scholars whose character is the truth, whose purpose is to increase the fund of human knowledge. All who hold to this ideal are akin—be they in the student body or in the faculty;—and all who are sluggards or cowards or self-seekers are strangers and enemies to the true university—be they enrolled as students or instructors. In the true university the division of the community into students and faculty is adopted solely for administrative purposes and should in no sense betoken a contrariety of interests. We are essentially one community, and whatever happens to the least of us vitally concerns all of us. The lively appreciation of this fact on the part of our student body has consoled and encouraged the faculty in many trying situations. Leaning upon this sympathy and mindful of the occasion we celebrate today when the spirit of independence is in the air, I venture, without previous consultation with anybody whomsoever, to address you on the subject of Academic Freedom.

"Best safety lies in fear" has too long been the rule of conduct of us long-suffering pedagogues! I do not purpose to use a single intemperate word and expect to offend nobody except perhaps a colleague or two who will be sure to pronounce my speech very indiscreet. Gentlemen, I can only plead in extenuation that for the past two weeks I have been drinking large draughts at the springs of our early history and am probably a bit intoxicated with the strong spirit of early Texas idealism and recklessness.

What does this resolution say? It says: "political activity"—without qualification, note!—"will be wholly discouraged under all circumstances." That's strong language. It has kick in it. Not even a pedagogue is so obtuse as to misunderstand it! What does it mean by the phrase "wholly discouraged"? To me it means in plain English that any member of this faculty who engages in any political activity that is displeasing to the duly constituted authorities will be disciplined. I limit the cases to such as would incur the displeasure of the Regents because I take it there are some few forms of political activity

that would not be deemed improper by them, as for example, paying taxes, serving on the jury, attending the polls to vote, and the like. However, the language of their resolution makes no exceptions whatever. Taken literally, it would, if obeyed, disfranchise and expatriate every member of this faculty! Surely no such absurd result was intended. Hence the political activity denounced must in reason be only such as would be improper—in the opinion of the Regents. The final arbiters in the matter are the Regents. Unfortunately they have given us no express direction as to what they deem proper and what improper conduct but have contented themselves with a warning in such sweeping terms as to create doubt and hesitation in the minds of some of us whether or not we may even exercise the constitutional rights and discharge of the constitutional duties of American and Texan citizenship! In so far as the strict enforcement of the Regents' resolution would invade our constitutional liberties as citizens and freemen, the issue is personal to the faculty. I am quite sure many members of this faculty have a very high regard for the fundamental law of the land, and will obey the constitution of Texas under all circumstances.

But there is another aspect of this warning of the Regents that is not merely personal to the faculty but of serious concern to the whole University community. Is our academic freedom in jeopardy? Does this resolution gag free speech in the University of Texas? Does this resolution strike at freedom of thought, which is the shield of democracy and the genius of all scientific progress? Are we going to be more timid "in the future and under all circumstances" about teaching and acting upon the inflexible Truth, be it in science, philosophy, law or government? In a word, will we henceforth be afraid of displeasing the Regents of this university by what we teach? That's the issue! That's a question, my colleagues, addressed to our own consciences! We alone can answer it. The Regents can't answer it, neither can the Governor, nor the Legislature, nor any party convention!

Academic Freedom is largely a subjective ideal—only those who have lived it can understand it! You students understand it and prize it, I am sure. You will bear me out when I say that the one supreme condition of all effective teaching is the confidence of the students that all is fair and above board.

You law students know that in every fiduciary relation *suppressio veri*, no less than *suggestio falsi*, is actionable fraud. "What the honest student wishes to hear is not officially prescribed or permitted views but the thoughts advanced as personal convictions by a man who has given thorough and earnest consideration to the great questions of the world and of life." Would you students have any respect for a professor who is an intellectual coward? Would you expect any benefit from the instruction or example of a man who strangles his conscience and teaches only half-truth? Could a man inspire you to scientific investigation or rightful conduct who garbles his convictions to hold a job? Such an one is unworthy of your generous association! The Regents ought to be the very first to expel him from these sacred precincts! Faithless to science and to truth, he secretly poisons the wine of our content with avarice and disloyalty!

The sting in this resolution of our Regents is this: Formerly the Regents trusted us, now they threaten us. Formerly our patriotic love of Texas, our devotion to this University, our personal sense of the great responsibility we bear to the students coming under our instruction and to the cause of education in Texas were trusted to fix the proper bounds of our official and personal conduct. Today we are no longer the keepers of our own consciences! What constitutes "political activity" rests in the bosom of the Board of Regents! What constitutes improper political activity rests likewise in the bosom of the Board of Regents! If Prof. Cofer's lawful acts were improper, what man here can know for sure which acts of his may in the future incur the displeasure and the penalties of the Board of Regents!

Two months after the outbreak of the war in Europe—you will pardon these personal references as I use them only for the purpose of illustration—I declared publicly that this nation could not trust in its isolation; that the situation would grow more dangerous and more desperate as the warring nations approached the end of their resources; that anyone of the belligerent nations by a wanton overt act might deliberately draw us into the European maelstrom. I advocated instant preparedness on land and sea as a national duty. About a year later the country awoke to its danger and began to prepare to meet it. Today the spectre of war stares us in the face! And the

nation that has provoked us is treacherously plotting to seduce a distracted and war-sick people into attacking us under the promise of restoring the "lost province of Texas" to Mexican rule! Ye Gods, what colossal ignorance of Texan history and Texan manhood!

Gentlemen, was I guilty of "political activity" in what I taught in 1914?

I taught that the occupation of Vera Cruz in April 1914 and the slaughter of 200 of its defendants by the U. S. forces were acts contrary to the law of nations and unjustifiable. I have taught that Pershing's protracted stay on Mexican soil was an illegal violation of the independence and integrity of Mexico. I have taught that the discriminatory legislation in this country aimed at the Japanese was a violation of the fundamental right of Japan to international respect and if persisted in it would some day provoke war. It never occurred to me to ascertain if my sincere convictions, based on honest study of these questions were popular or coincided with the views of the duly constituted authorities or not. I thought only of my Science and the immutable principles of Justice!

But, sirs, that warning of the Regents in its present sweeping and general form will, if not modified, undoubtedly produce a feeling of constraint in the mind of every conscientious teacher of the University who tries to conform to it. That feeling of constraint will superinduce disappointment and bitterness in the hearts of the thinking men and women of this faculty. Haven't we, in the name of patience, difficulties enough to contend with? Despite them all, this faculty has tried to retain its zeal for learning and its ever youthful hope for the ultimate realization of the dream of the fathers that this will some day be a university of the first class. Why chill the ardor of these faithful men and women by needlessly threatening to undermine their ideal of the freedom of thought and of teaching?

That sweeping warning of our Board of Regents was not called for by any legitimate emergency existing at the time. Nor was it warranted by any reprehensible conduct of our faculty. We were keeping the even tenor of our way when this "caution" was unceremoniously addressed to us. Does it not reflect a want of confidence in us on the part of the Board of Regents? Does it not indicate that the Regents feared that we might not have a proper conception of the bounds of our academic free-

dom and might overstep them if not duly warned in advance of their displeasure? What effect must such publicly proclaimed want of confidence have upon the student body? As long as that warning in its present form stands of record, it does an injury to every member of our faculty who is conscious of the rectitude and correctness of his official conduct. Has the academic freedom of this community been so grossly abused by your faculty as to justify a warning of this sort? Certainly there are limits to academic freedom. In a university supported by public funds, no professor or student has the right to assume an attitude of hostility toward the state "aiming at its dismemberment and destruction and not its preservation and improvement." The liberty of the scholar within the university to set forth his conclusions, be they what they may, in public utterances is based upon the assumption that they are conclusions "gained by a scholar's method and held in a scholar's spirit: that is to say, they must be the fruits of competent and patient and sincere inquiry, and they should be set forth with dignity, courtesy and temperateness of language". You will agree, I am sure, that our faculty has offended against none of these restrictions. If we have erred at all, it has been rather on the side of too much self-restraint and docility and too little independence of thought and utterance. A professor ought to be a "contagious center of intellectual enthusiasm". Instead of disciplining men because they think or bring students to think in ways objectionable to the duly constituted authorities, it would be wise to inquire if it would not be more profitable to dismiss men because they fail to stimulate thinking of any kind at all.

What a professor declares on this campus to be the truth in science, law or government, he has the right to proclaim as the truth in the mart and in the forum. He has the same political and inalienable rights as every other citizen of this state. The University of Texas is not a jail in which to quarantine thinkers! Why, sirs, one of the most characteristic and useful functions of a university in a democratic society is "to help make public opinion more self-critical and more circumspect, to check the more hasty and unconsidered impulses of popular feeling;" to instruct and direct the people in all lines of social progress—in a word to serve the state! The people have a right to look to this university for light and

for leading! It is precisely this high function of the university that is most injured by any restriction upon its academic freedom.

If you would develop any organism into power, the first and most elementary rule is, in the words of Matthew Arnold, "Do nothing to *depress* the life of the organism"! The Regents of the University of Texas are the champions of the rights of faculty and students before the people of this state! As the highest administrators of the university, they are the custodians of its influence in this state. This university is a public institution. Is not its every act a public act, its every activity, in the truest, fullest sense, a political activity? The resolution of the Regents which demands that the faculty desist from political activity demands what it is not only inexpedient but also impossible to comply with. When its full import is brought to the attention of the Regents by faculty and students, as I trust will be done speedily in a proper manner, we may be confident the right thinking men on the Board will vote to expunge this warning from the record and to trust these men and women of the faculty with full personal and academic freedom, as has been the rule since the founding of this university.

A word more and I am done. In what I have said today I have tried to exemplify the true spirit of academic freedom. I may have failed, and I may have done unintentional injustice. Others could have spoken better and more wisely. However that may be, I have tried sincerely to celebrate this anniversary with you, my fellow students, in a proper manner. I have ventured to warn you of what I feel to be a dangerous approach to an attack upon freedom of thought in our beloved institution. I have spoken as in the visible presence of those heroes of sacred memory, of the statesmanlike Rusk, the wise and loyal Austin—of the chivalrous Fannin—of the brave Travis who was the burnt-offering without blemish on the altar of our freedom—of the great-hearted Sam Houston, the master mind of the Texan revolution, the fearless conqueror of the haughty Napoleon of the west! And translating their passionate love of constitutional liberty into the terms of our academic life, I have endeavored to speak today—In the spirit of 1836!

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